

(2025) 07 DEL CK 1008

In the Delhi High Court

Case No : FAO (COMM) No. 59 Of 2024 & Civil Miscellaneous Application No. 25591 Of 2024

Casablanca Apparels Pvt Ltd

APPELLANT

Vs

Polo/ Lauren Company L.P

RESPONDENT

Date of Decision : 30-07-2025

Acts Referred:

Code of Civil Procedure, 1908 — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 4
Limitation Act, 1963 — Section 5
Commercial Courts Act, 2015 — Section 13(1A)

Citation : (2025) 07 DEL CK 1008

Hon'ble Judges : C. Hari Shankar, J;Om Prakash Shukla, J

Bench : Division Bench

Advocate : Manu T.R., Shalini Sukumaran, Anirudh Bakhru, Rishi Bansal, Kanupriya Sabharwal, Shruti Manchanda

Final Decision : Dismissed

Judgement

Om Prakash Shukla, J.

CM APPL. 18671/2024 (for delay)

1. This is an application filed on behalf of the appellant under Section 5 of the Limitation Act, 1963 seeking condonation of delay of 73 days in filing the present appeal interdicting an order dated 20.10.2023 passed by the learned District Judge (Commercial court-02), South, Saket Courts, New Delhi in CS (COMM) No. 523/2022. By the said common order, the learned District Judge has allowed application XXXIX Rule 1 & 2 CPC filed by respondent herein and dismissed the application of appellant filed under section XXXIX Rule 4 CPC.

2. Since, the present appeal is delayed by 73 days as mentioned in the delay application, it would be apposite to quote the relevant provisions governing the filing of the present appeal and the prescribed period of limitation. In terms of section 13(1-A) of the Commercial Courts Act, 2015 an appeal arising from any

judgment or order passed by the Commercial Court must be filed within a period of sixty days. The relevant portion of the section is reproduced.

"13. Appeals from decrees of Commercial Courts and Commercial Divisions.—(1) Any person aggrieved by the judgment or order of a Commercial Court below the level of a District Judge may appeal to the Commercial Appellate Court within a period of sixty days from the date of judgment or order.

(IA) Any person aggrieved by the judgment or order of a Commercial Court at the level of District Judge exercising original civil jurisdiction or, as the case may be, Commercial Division of a High Court may appeal to the Commercial Appellate Division of that High Court within a period of sixty days from the date of the judgment or order."

3. Before adverting to the merits of the case, we must point out that the admitted date of filing of appeal is 01.03.2024 as claimed by the appellant. However, as per the record available on the official website of the Delhi High Court, the present appeal was filed on 22.03.2024. In any case, the appellant has admitted to 73 days of delay in the delay application and as such we without entering into any controversy as to the date of actual filing of the present appeal, proceed further considering 73 days of delay beyond the prescribed 60 days, in filing the present appeal, in terms of Section 13(1-A) of the Commercial Court Act, 2015.

4. In the present case, the impugned order was passed on 20.10.2023 by the learned District Judge (Commercial Court-02), South, Saket Courts, New Delhi. Since the appeal was not filed within the prescribed 60 days period, which came to expire on 19.12.2024, but came to be filed only on 01.03.2024 with a 73 days delay or on 22.03.2024, with a delay of 91 days. The appeal is obviously time-barred.

5. Though appellant has also contended that some time was consumed by him to obtain certified copy of impugned order but it has been submitted in reply of the respondent that he has not filed on record certified copy of the impugned order and rather moved an application seeking exemption from filing of certified copy of impugned order, thus the ground for exclusion of some days in obtaining certified copy of the impugned order does not come to any rescue to the appellant. Thus, this court is brought to the sole ground, which the appellant has adduced, while seeking condonation of delay in filing of this appeal. According to the appellant, he is based in Mumbai and had to identify his advocate and take opinion about the merits of the case and chances of success in the appeal. It has also been submitted that it took some time to identify his previous counsel and call for the suit papers and copy of the orders from the advocate who represented him before the learned District Judge, and in the process, substantial time has elapsed. The said sole ground can be curled out from paragraph No. 4 of the application, which inter-alia states:

"4. The Applicant/ Appellant respectfully submits that the delay has occasioned

due to the sufficient cause. The Appellant is based in Mumbai and had to take identity its Advocate and take opinion about the merit of the case and chances of success in the appeal and for the same it has some time to identify its advocates and call the suit papers and copy of the order from the advocate represented before the ltd District judge and in the process substantial time has elapsed.”

6. The aforesaid submission of appellant has been controverted by the respondent in its reply by submitting that the application fails to disclose a “sufficient cause” for condonation of above huge and inordinate delay in filing of this appeal and to substantiate this fact, they also referred to a email dated 16.01.2024 from the appellant's present counsel on record, wherein the appellant proposed a settlement between the parties, which indicates that the new counsels were engaged and were already privy to the dispute much before the said date of 16th January 2024. They have also enclosed copy of the said e-mail along with their reply and it is a vehement contention of learned Counsel for respondent that it is crystal clear from the contents of this e-mail that the appellant’s present counsels (on record) were already engaged by the appellant prior to the date of filing of the present appeal.

7. The appellant also seeks to rely on medical grounds in the rejoinder which the respondents have challenged with the fact that they were never disclosed in the original application seeking condonation of delay. These grounds, being introduced at this belated stage, are opposed and their authenticity is denied by the respondent and it has been argued that these grounds are merely an after-thought.

8. In the judgment of Thirunagalingam v. Lingeswaran & Anr. 2025 SCC OnLine SC 1093, the Supreme Court has made it clear that the foremost duty of the Court, while considering a plea for condonation of delay, is to examine the bona fides of the explanation offered by the applicant. The relevant extract is reproduced below:

“31. It is a well-settled law that while considering the plea for condonation of delay, the first and foremost duty of the court is to first ascertain the bona fides of the explanation offered by the party seeking condonation rather than starting with the merits of the main matter. Only when sufficient cause or reasons given for the delay by the litigant and the opposition of the other side is equally balanced or stand on equal footing, the court may consider the merits of the main matter for the purpose of condoning the delay.

32. Further, this Court has repeatedly emphasised in several cases that delay should not be condoned merely as an act of generosity. The pursuit of substantial justice must not come at the cost of causing prejudice to the opposing party. In the present case, the respondents/defendants have failed to demonstrate reasonable grounds of delay in pursuing the matter, and this crucial requirement for condoning the delay remains unmet”.

9. The Commercial Courts Act, 2015 was enacted with the objective of ensuring

swift adjudication of high stakes commercial disputes involving intricate factual and legal issues. Timely resolution of such matters is intended to enhance the perception of the Indian legal system as independent and efficient, thereby strengthening global confidence, fostering economic growth, and improving India's standing in terms of justice delivery and legal reliability. In *Jharkhand UrjaUtpadan Nigam Ltd. & Anr. v. M/s Bharat Heavy Electricals Limited* 2025 SCC OnLine SC 910, the Supreme Court emphasized the objective of Commercial Court Act, 2015 to the following effect:

"17. One of the avowed objects of the provisions of the Commercial Courts Act read with amended provisions of CPC applicable to the Commercial Courts is to ensure that there is no unnecessary delay in disposal of the commercial suit. Once specific time lines are fixed and there is a strict procedure provided in terms of the Commercial Courts Act, parties are by the statute put to notice that they have to very carefully contest the suits filed as commercial suits and that failing to comply with statutory timelines and a strict procedure, certain adverse consequences may flow on account of lack of application by a contesting party"

10. Additionally, the Supreme Court, in *Government of Maharashtra v M/s Borse Brothers Engineers & Contractors Pvt. Ltd.* (2021) 6 SCC 460, has categorically held that the power to condone delay in commercial matters is to be exercised by way of exception, and not as a rule, and only where the party has acted in bona fide manner and with due diligence, and not negligently or casually.

11. Given the object and scheme of the Commercial Courts Act, 2015 and the law laid down by Supreme Court, which lays emphasis on speedy resolution of high-value commercial disputes, the expression "sufficient cause" must be interpreted strictly, and not liberally.

12. Now advertng to facts of the present case, time taken and explanation offered by the appellant is that time was taken to identify his previous counsel and call for the suit papers and copy of the order from the advocate who represented him before the learned District Judge, does not inspire confidence. Recently, the Supreme Court in *Rajneesh Kumar & Anr. v. Ved Prakash* 2024 SCC OnLine SC 3380, relevant to the context, held at paragraph 10 of the said judgment as follows:

"10. It appears that the entire blame has been thrown on the head of the advocate who was appearing for the petitioners in the trial court. We have noticed over a period of time a tendency on the part of the litigants to blame their lawyers of negligence and carelessness in attending the proceedings before the court. Even if we assume for a moment that the concerned lawyer was careless or negligent, this, by itself, cannot be a ground to condone long and inordinate delay as the litigant owes a duty to be vigilant of his own rights and is expected to be equally vigilant about the judicial proceedings pending in the court initiated at his instance. The litigant, therefore, should not be permitted to throw the entire blame on the head of the advocate and thereby disown him at

any time and seek relief.”

13. The appellant is a private limited company with its office in Mumbai and is managed by educated businessmen who know where its records lies. It is evident from the records that the appellant was in deep state of negotiation with the Respondent for settlement as is clear from the email dated 16.01.2025 filed on record. Apparently, the negotiations failed and it is quite possible that the failure of the said negotiation might be one of the triggering points for preferring the present belated Appeal. The conduct of the appellant appears to be that of the fence sitters.

14. This court finds that the approach on the part of the appellant to file the present appeal has been very negligent and lackadaisical. Even presuming that the reasons mentioned for condoning the delay are to be true, this court does not find the same to be bona fide or sufficient enough to be included in the expression of “sufficient cause” under section 5 of Limitation Act, 1963. The appellant has failed to show any specific or bona fide circumstances that prevented it from timely steps to be taken. The inaction appears to stem from internal disorganization and lack of diligence, rather than any bona fide difficulty. Applying the principles and the above discussed law as laid down by the Supreme Court, this Court finds that the delay in filing the appeal is not supported by any credible grounds or explanation to include it in the expression of “sufficient cause”.

15. The Supreme Court has time and again reiterated that the expression “sufficient cause” as mentioned under Section 5 of the Limitation Act, 1963 is not elastic enough to cover long delays and must be interpreted strictly in the context of Commercial Courts Act, 2015 and that condonation of delay in such appeal has to be granted by way of exception and not as a matter of rule, and that too only when the party acted in a bona fide manner and not negligently. In the present case, the submissions advanced by the appellant, when tested on the anvil of this legal threshold, fall short of the standard required for invoking this discretionary relief.

16. In any event, even if the grounds mentioned by the appellant for condoning the delay are presumed to be genuine, the appellant's inaction in approaching the Court within the limitation period, coupled with an evident lack of urgency in taking appropriate legal steps, cannot be justified. The vague references to health emergencies at a belated stage of “rejoinder” appears to be an afterthought and does not inspire confidence or meet the threshold of “sufficient cause” under Section 5 of the Limitation Act, 1963.

17. For all the aforesaid reasons, the explanation furnished by the appellant for the inordinate delay is vague, unsatisfactory, and fails to meet the threshold as laid down under Section 5 of the Limitation Act, 1963 as interpreted in the above-mentioned Supreme Court judgments. Accordingly, we find no “sufficient cause” to condone the delay.

18. Hence, the application seeking condonation of delay is dismissed being devoid of merit.

FAO (COMM) NO. 59/2024

19. As the application for condonation of delay is dismissed, the appeal is also dismissed on the grounds of limitation, without going into its merits.